

Online Mediation: Has Its Time Come?

BRUCE LEONARD BEAL*

I. SUMMARY

- As commerce and other transactions and communications move onto the Internet, intuitively, methods to resolve disputes arising from this trend also must move onto the Internet.
- Mediation, being less formal than other methods of dispute resolution, especially litigation and arbitration, better lends itself to the Internet.
- Internet commerce sets up the probability that its merchants, suppliers, and customers will not exist in the same legal jurisdictions. The confusing application of laws and wide geographical dispersion of these parties will necessitate a faster and cheaper dispute resolution methodology.
- Internet parties will find a way to obviate the legal risk of submitting their disputes to foreign laws and proceedings as well as the costs of traveling to and supporting these proceedings.
- Internet parties (and this is a purely personal observation based on years of experience with the Internet, both personal and business) appear not to resort to litigation as easily as traditional parties, maybe because of the above considerations, but also because they tend to be more sophisticated in knowing that disputes must be dealt with quickly and cheaply.
- Internet parties are not used to paying for services, including professional services and advice! Internet mediators need to be prepared for a substantial number of queries asking essentially for free legal advice rather than for any true desire to mediate formally.
- Mediators should “keep their day jobs.” Online mediation will not manifest fully until videoconferencing becomes ubiquitous, so that the following will apply: (1) video cameras and microphones are built into computers; (2) videoconferencing software is bundled in computers; and (3) modems are fast enough to accommodate videoconferencing. Networks and online appliances should be included within the above term “computers.” Businesspersons have not accepted mediation negotiations by e-mail, Internet chat rooms, and the like. When videoconferencing becomes about as easy as using a telephone, then online mediation will come into its own.

* Originator and owner of Internet Neutral Mediation Services <<http://www.internetneutral.com>>; attorney; mediator; editor of new mediation websites for the Open Directory project; panel expert for Allexperts.com in the arbitration/mediation section.

II. REASON FOR BEING: ADR MOVES TO THE INTERNET

By 1997 it became clear that the Internet was going to revolutionize the way everything is done in the business world, including communications, transactions, and yes, even mediation. At the time, I was looking for a way to apply my experience and skills to the Internet. I determined that online mediation, or "virtual" mediation, as some term it, was a service that would become useful in the Internet revolution. After several months of planning, writing, and development, "Internet Neutral" was born, the world's first wholly online mediation service.¹

As disclosed upon the Internet Neutral homepage,

Internet Neutral_{SM} is a quick and inexpensive way to resolve disputes between Internet businesses and their customers or suppliers, wherever they may be in the world, through the use of Internet or "online" mediation. Litigation in remote and strange places is simply too costly, time-consuming, and risky for . . . business. . . . This truly modern alternative dispute resolution technique takes full advantage of the emerging electronic revolution to simplify and conserve . . . Internet business.²

III. THE CURRENT STATUS OF ADR ON THE INTERNET

The idea of electronic, virtual, or online mediation is indeed valid, but alas, it is still ahead of its time. The world was not then ready in 1998, and it still is not quite ready in 2000 for pure online mediation. Many businesspersons remain personally uncomfortable with computers, the Internet, and especially with specialized communication technologies such as chat rooms, instant messaging, and videoconferencing.

IV. THE OUTLOOK FOR ADR ON THE INTERNET

Online mediation will not manifest fully until videoconferencing becomes commonplace and the following apply: (1) video cameras and microphones are built into computers; (2) videoconferencing software is bundled with computers; and (3) modems are fast enough (i.e., "broadband" or 512 kilobytes per second and greater) to accommodate videoconferencing. Networks and online appliances should be included within the above term "computers."

¹ See Bruce Leonard Beal, *Internet Neutral* (visited Apr. 17, 2000) <<http://www.internetneutral.com>>.

² *Id.*

ONLINE MEDIATION: HAS ITS TIME COME?

Businesspersons have not yet accepted mediation negotiations by e-mail, Internet chat rooms, and the like. When videoconferencing becomes about as easy as using a telephone, then online mediation will come into its own.

There are several reasons why videoconferencing is more effective for online mediation. Interaction among the parties and the mediator may make the difference in whether mediation is successful or not. For example, the mediator must earn his authority from the parties.³ This often is procured through serious demeanor, professional presentation, occasional humor, and just plain charisma. These traits are difficult to communicate without seeing a person. In addition, the parties may assess more easily the strength of conviction of the other party through visual means.

We always hear about the preference for face-to-face meetings over teleconferences for the purposes of serious discussions, including mediation sessions. We will have to wait to assess where videoconferencing falls in effectiveness between face-to-face meetings and teleconferences until more experience with videoconferencing becomes available.

When videoconferencing on the Internet becomes about as easy to use as the telephone, online mediation will come into its own. As we have witnessed in the ever-accelerating world of the Internet, this time is not far away, and it gets increasingly closer each day. In the meantime, there will be an ever-increasing acceptance of online mediation by increasing numbers of Internet-comfortable persons.

V. INTERNET NEUTRAL: SITE OVERVIEW

A. *Homepage*

Internet Neutral presents itself to the world on the Internet as a fairly simple website consisting of approximately twenty-five webpages. The Homepage directs visitors to all pages of the website, including a description of the following: online mediation, résumés of representative mediators, the Internet technologies employed by Internet Neutral such as videoconferencing, the fees to be charged, the various forms used for online mediation, and the rules, standards, and other legalese used by Internet Neutral.⁴

³ See ALLAN H. GOODMAN, BASIC SKILLS FOR THE NEW MEDIATOR 10 (1994).

⁴ See Bruce Leonard Beal, *Internet Neutral* (visited Apr. 17, 2000) <<http://www.internetneutral.com>>.

B. *Representative Mediators*

A perusal of the representative résumés of mediators at Internet Neutral will disclose a strong panel of mediators who have large credentials and experiences in the mediation field.⁵ The creator of Internet Neutral (this writer) often marvels that his mediators are better qualified than he is to mediate! Internet Neutral plans to grow this panel to provide for a breadth in languages, nationalities, and business areas commensurate with those utilized by the world.

C. *Forum for Mediation*

The Forum page of Internet Neutral discloses that Internet Neutral mediates on the Internet unless the parties agree to a face-to-face meeting or teleconference.⁶ Internet business is worldwide in scope, and in most cases, physical travel to resolve disputes simply will be too expensive and time-consuming.⁷

Internet mediation is convenient for the parties and the mediator in that each of the parties need not travel to the preferred and so-called “neutral territory,” usually the mediator’s office. The parties and the mediator may feel comfortable staying in each of their own offices. None of the parties will feel intimidated by being elsewhere, although their competency, or lack thereof, with use of the Internet may be intimidating in itself.

“Mediation sessions take place on the Internet via e-mail, instant messaging, chat conference rooms, and/or videoconferencing, all of which are set up by Internet Neutral as private and confidential mediation channels.”⁸ Two mediating parties will have two conference channels or “rooms,” as follows: one for private conversations only between each party and the mediator, and another for private conversations among all parties and the mediator.⁹

The mediator will set up the conference channels in advance, and the parties need only enter their designated conference channels at the designated time with their designated password, previously e-mailed to them by the

⁵ See Bruce Leonard Beal, *Internet Neutral: Resumes of Representative Internet Neutrals* (visited Apr. 17, 2000) <<http://www.internetneutral.com/resumes.htm>>.

⁶ See Bruce Leonard Beal, *Internet Neutral: Forum* (visited Apr. 17, 2000) <<http://www.internetneutral.com/forum.htm>>.

⁷ See *id.*

⁸ *Id.*

⁹ See *id.*

mediator.¹⁰ There is an important caveat for network users, particularly corporate network users. Most business networks limit access to Internet features other than e-mail for security reasons. If you are to engage in online mediation, it is crucial that you contact your network administrator in advance to enable your network connection.

D. *The Rules*

Interestingly enough,

[t]he Internet Neutral itself does not act as Mediator. The Internet Neutral administers the mediation process in accordance with the Internet Neutral Rules and the agreement of the parties, teaches mediation and Internet communication skills to its mediators, and maintains a panel of qualified, experienced mediators with an understanding of current legal and business practices, as necessary for the matters pending before Internet Neutral.¹¹

The Rules will apply to all mediations conducted by the Internet Neutral.¹²

E. *The Fees*

For online mediation other than by e-mail, there is presently a minimum (nonrefundable) half-day fee of \$250 for each party for any dispute accepted by Internet Neutral, payable at the time of submission of their request, demand, or response.¹³ Included in this fee are approximately two hours of mediation session time (including breaks) and two hours for reading and preparation.¹⁴

All other services, including any time expended beyond the half-day fee, are charged at the rate of \$125 per hour, split equally among the parties. These fees assume provision of services between 7 a.m. and 7 p.m., local time of the mediator. Charges outside of these hours will be 50% higher.¹⁵

¹⁰ See *id.*

¹¹ Bruce Leonard Beal, *Internet Neutral: Mediation Rules* (visited Apr. 17, 2000) <<http://www.internetneutral.com/rules.htm>>; see also *infra* app. F.

¹² See Bruce Leonard Beal, *Internet Neutral: Mediation Rules* (visited Feb. 1, 2000) <<http://www.internetneutral.com/rules.htm>>.

¹³ See Bruce Leonard Beal, *Internet Neutral: How Much Will This Cost?* (visited Feb. 22, 2000) <<http://www.internetneutral.com/fees.htm>>; see also *infra* apps. C–E.

¹⁴ See Bruce Leonard Beal, *Internet Neutral: How Much Will This Cost?* (visited Feb. 22, 2000) <<http://www.internetneutral.com/fees.htm>>.

¹⁵ *Id.*

These fees will need to be adjusted as the market dictates, taking into account the skills of the particular mediator and the complexity of the matter of mediation.

If the matter may be resolved solely through e-mail means where all parties are not 'present' at the same time, and no significant documentation needs to be reviewed, then Internet Neutral will charge the following fee:

\$1 per minute ^a	\$0.01–\$100.00 ^b
\$2 per minute ^a	\$100.01–\$1,000.00 ^b
\$3 per minute ^a	\$1000.01–\$10,000.00 ^b
\$4 per minute ^a	\$10,000.01–\$100,000.00 ^b
\$5 per minute ^a	\$100,000.01–\$1,000,000.00 ^b
\$6 per minute ^a	\$1,000,000.01 and above ^b

^a time spent preparing/sending and reviewing e-mail

^b determined by combining claims of all parties.

Each party shall pay a retainer in advance of dispute resolution, representing each party's equal portion of a minimal estimate of the time required by the Internet Neutral to resolve the matter by [e-mail] only.

If the actual time required by the Internet Neutral will significantly exceed the estimate, the Internet Neutral shall so advise the parties, and the parties shall pay a new retainer in advance of further dispute resolution, should they agree that further mediation is warranted.

Expenses of producing persons and evidence shall be borne by the party producing same. Expenses of providing computer, Internet, and software sufficient to support mediation shall be borne by the parties individually. Internet Neutral will reasonably adapt to the computer, Internet, and software resources available to the parties.¹⁶

VI. INTERNET NEUTRAL: SITE STATISTICS

Internet Neutral has been online since January 1998, with an Internet domain of <<http://www.internetneutral.com>>. It has been visited on average twenty-four times per day, 168 times per week, or 722 times per month, for an approximate total visitor count of 14,448 with only popular search engine promotion.¹⁷

¹⁶ *Id.*

¹⁷ See *infra* app. G.

General statistics for the last available reporting period (July 31, 1999 through October 2, 1999) are attached as Appendices G through L.¹⁸ Statistics have remained about the same throughout the period without additional promotion on the search engines or otherwise.

International visitors represent 8.12% of the total, although users of unknown origin represent an additional 16.76%.¹⁹ Visitors average over seven minutes on the site.²⁰ Repeat (sometimes multiple) visitors represented twenty-two percent of the site traffic during the above period. New visitors to the site during this period represented fifty-nine percent of the site traffic.²¹

Although dozens of "cases" have been submitted to Internet Neutral for possible resolution, not one case has yet progressed to actual mediation using the online mediation system. I have often remarked that if I had as many cases as I had persons interested in being mediators, I would have a booming business. There are several reasons for this, as follows: (1) one or more parties will not consent to mediation; (2) one or more parties will not consent to the use of an Internet technology, such as e-mail, chat room, instant messaging, or videoconferencing for mediation; (3) the amount in controversy was not sufficient to warrant the costs of online mediation; or (4) one or more of the parties misapprehends the nature of mediation and desires arbitration or even litigation instead.

A. Consent

Most submissions to Internet Neutral were initiated by one of the parties without the other party's or parties' knowledge or consent. Since mediation is consensual in nature, obtaining the consent of the other parties is essential. Without a prior binding contract among the parties that requires mediation prior to litigation, it is difficult to obtain consent to mediation "after the fact." If the parties value an ongoing relationship, then perhaps a mutual agreement to mediate would be forthcoming, but the Internet is so young that it has yet to engender long-term business relationships.

Internet Neutral has provided a "Supplemental Contract Provision" that may be placed into common business contract forms and requires all parties to engage in online mediation or other mediation as agreed to among the parties prior to engaging in more formal legal proceedings, such as arbitration or litigation.²² Internet Neutral does not know to what extent, if

¹⁸ See *infra* apps. G-L.

¹⁹ See *infra* app. G.

²⁰ See *infra* app. G.

²¹ See *infra* app. G.

²² See *infra* app. A.

any, that this provision has been incorporated in others' contract forms, but there are instances in which others actually have asked permission to use these forms for their own purposes.

Even where the parties have not signed a previous contract requiring mediation, they can do so after a dispute arises, assuming they all consent by use of the "Internet Neutral Mediation Agreement."²³

The use of these forms by others is encouraged in order to promote mediation on the Internet. Of course, any enhancements of these forms are solicited back by Internet Neutral in the same spirit.

Internet commerce produces merchants, suppliers, and customers who may and usually do exist in different jurisdictions. When a dispute arises, unless it is of sufficient magnitude to warrant pursuing the dispute in the other parties' jurisdictions, it is quite easy for a disputant to "write it off" as a "good learning experience" or for the disputant to just "sit tight" and await further developments, usually none.

B. Technology

Even where all of the parties consent to online mediation in general, it is rare that they mutually will agree to implement a specific Internet technology, either e-mail, chat room, instant messaging, or videoconferencing. E-mail never has been agreed to. Internet Neutral only recently has offered e-mail mediation, and it is only intended for disputes involving small amounts. The basic problem with e-mail is that it is not immediately interactive.

You must wait for each communication to arrive. It does not lend itself to focused mediation sessions. For those disputes of lesser value, in which time may be taken and in which focused mediation sessions are not necessary for resolution, e-mail may be employed successfully. In a sense, it could be seen as a stream of correspondence, guided by a neutral third party, to achieve resolution. One thing is certain; most, if not all, premediation and postmediation session communication will be conducted by e-mail in the near future.

Chat rooms are not well understood by the average Internet user, particularly businesspersons. Instant messaging is very new but becoming popular, and it may take some of the e-mail communications discussed above. It could be a back channel for videoconferencing as well.

The future of mediation on the Internet is videoconferencing. As discussed in greater detail in Part IV, videoconferencing is not yet common

²³ See *infra* app. B.

on the Internet.²⁴ Of all of the Internet communication technologies, it is the most likely to result in successful online mediation because it is the most similar medium to actual physical meetings.

C. Amount in Controversy

Most of the queries at Internet Neutral involved dissatisfied purchasers of online products. Internet Neutral and eBay, Inc., the leading online auction website,²⁵ engaged in discussions to determine whether Internet Neutral was a vehicle for addressing the mounting disputes between Internet sellers and buyers of online auctions. At that time, the costs of Internet Neutral were felt prohibitive for the average online auction dispute.²⁶ The minimum fee for Internet Neutral is \$500, representing four hours of mediation services. This amount, of course, exceeded the cost of most items purchased by auction online.

The eBay site asked Internet Neutral to come up with a cheaper, alternative online mediation service. It is this request that resulted in the addition of e-mail to the Internet Neutral repertoire of mediation "media."²⁷ It is based on a small fee per minute charge, escalating with the amount of the dispute, e.g., ranging from one dollar per minute to six dollars per minute.²⁸ The amount of the fee, of course, is entirely dependent upon the length of the dispute in "mediation minutes" used during e-mail communications. Soon thereafter, eBay abandoned its attempt to bring a mediation service directly to bear in its business. The eBay site now requires binding arbitration of its disputes as a condition to buying or selling on the eBay auction.²⁹ No other party has requested the use of e-mail mediation.

²⁴ See *supra* Part IV.

²⁵ See eBay (visited Apr. 8, 2000) <<http://www.ebay.com>>.

²⁶ See *supra* Part V.E (discussing Internet Neutral's fee structure).

²⁷ See *supra* Part V.C (discussing the available fora for online mediation).

²⁸ See *supra* Part V.E.

²⁹ See eBay, Inc., *eBay User Agreement* (visited Apr. 8, 2000) <<http://www.pages.ebay.com/help/communiuty/png-user.html>>. The eBay User Agreement states in pertinent part:

Any controversy or claim arising out of or relating to this Agreement or our services shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration shall be conducted in San Jose, California, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. Either you or eBay may seek any interim or preliminary relief from a court of competent jurisdiction in San Jose,

D. Nature of Mediation

Most of the parties coming to Internet Neutral have come to resolve a dispute, not really knowing or caring what mediation is. In many cases, they are looking just for advice largely legal, recommendations, and ideas of how to resolve their disputes. Internet Neutral advises each of these parties that mediation requires the mutual consent of all of the parties, that mediation is not possible without such consent, and that mediators do not advise any of the parties legally, other than to recommend seeking legal advice separately.³⁰ This is the result of most queries for the services of Internet Neutral.

In addition, once many parties understand the nature of mediation, they determine that mediation is not the best method for their dispute and that arbitration or even litigation is the best approach. For example, Internet Neutral has received cases involving disputes between computer companies over competition for Internet domain names and related trademark issues. These disputes are often heated, and a middle ground acceptable to all is hard to come by. Internet Neutral has referred these parties to expert legal counsel in order to resolve their disputes, often requiring litigation.³¹

VII. INTERNET NEUTRAL: ETHICAL CONSIDERATIONS

Internet Neutral incorporates the *Model Standards of Conduct for Mediators*, approved by the American Arbitration Association, the Litigation and Dispute Resolution Sections of the American Bar Association, and the Society of Professionals in Dispute Resolution.³² They “have not been

California necessary to protect the rights or property of you or eBay pending the completion of arbitration.

Id.

³⁰ See *infra* app. B.

³¹ Other interesting Internet Neutral site statistics may be found in the following Appendices: Appendix G (setting forth general Internet Neutral statistics), Appendix H (setting forth Internet Neutral’s most requested pages); Appendix I (setting forth those countries which are most active in using Internet Neutral); Appendix J (describing Internet Neutral’s organizational breakdown); Appendix K (setting forth the top search engines used to find Internet Neutral); and Appendix L (setting forth the top search phrases used to find Internet Neutral). All reports contained in these Appendices are courtesy of, and copyrighted by, Web Trends. See *infra* apps. G–L.

³² See generally MODEL STANDARDS OF CONDUCT FOR MEDIATORS (American Arbitration Ass’n et al. 1998).

ONLINE MEDIATION: HAS ITS TIME COME?

considered by the American Bar Association House of Delegates and do not constitute the policy of the American Bar Association.”³³

According to the Introductory Note to the Model Standards,

The purpose of this initiative was to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it—a beginning, not an end. The model standards are intended to apply to all types of mediation.³⁴

In some cases, laws or contractual agreements may affect the application of these standards.

Internet Neutral agrees that the Standards apply equally to online mediation. In some cases, online mediation lends itself well to the Standards. For example, the Model Standard dealing with fee arrangements, which provides that “[a] [m]ediator [s]hall [f]ully [d]isclose and [e]xplain the [b]asis of [c]ompensation, [f]ees, and [c]harges to the [p]arties,” is a good example.³⁵ The Internet provides an excellent electronic billboard for the full disclosure and explanation of the basis for fees and expenses.³⁶ Not only may prospective mediating parties understand the fees of Internet Neutral, but they also may compare such fees immediately with other online mediators. The efficiency of the Internet promotes the Model Standard.

There is one practice of Internet Neutral that does create at least a concern under the Model Standards. Hopefully the illustration of this concern will stimulate further discussion and resolution of this concern. Standard III of the Model Standards relates to “Conflicts of Interest” and states in part that “[a] [m]ediator [s]hall [d]isclose all [a]ctual and [p]otential [c]onflicts of [i]nterest [r]easonably [k]nown to the [m]ediator.”³⁷

As discussed previously in Part VI, Internet Neutral offers a Supplemental Contract Provision that requires a party to such a contract to engage in mediation through Internet Neutral prior to filing any litigation or

³³ *Preliminary Remarks* to MODEL STANDARDS OF CONDUCT FOR MEDIATORS (American Arbitration Ass’n et al. 1998).

³⁴ *Introductory Note* to MODEL STANDARDS OF CONDUCT FOR MEDIATORS (American Arbitration Ass’n et al. 1998).

³⁵ MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard VIII (American Arbitration Ass’n et al. 1998).

³⁶ See *Internet Neutral: How Much Will This Cost?* (visited Apr. 17, 2000) <<http://www.internetneutral.com/fees.htm>>.

³⁷ MODEL STANDARDS OF CONDUCT FOR MEDIATORS Standard III (American Arbitration Ass’n et al. 1998).

arbitration in the dispute.³⁸ One could fantasize about IBM incorporating this provision into its contracts for all Internet transactions. One could envision that such a development could result in significant income to Internet Neutral.

One also could be concerned that this fact could create a potential conflict of interest along the lines that the mediator might favor IBM's position due to the sizeable contribution to the mediator's income over time. Internet Neutral believes that such a circumstance would require Internet Neutral to disclose this potential conflict of interest.

Of course, the parties are free under the Model Standards to consent mutually to the continuation of the mediator after disclosure. One must wonder, however, how many sophisticated parties actually would consent to continuation of the mediator after such a disclosure. Perhaps the assignment of an Internet Neutral mediator who is not aware of IBM's substantial usage of Internet Neutral is enough to obviate disclosure and consent.

Finally, there is a somewhat analogous ethical prohibition about lawyers from the same firm representing clients with conflicting interests and the "Chinese Wall" exception.³⁹ It might seem a stretch, however, to treat Internet Neutral and its mediators the same as lawyers in a law firm. This would seem to be the substance of an entirely separate law review article.

³⁸ See *infra* app. A.

³⁹ See, e.g., MODEL RULES OF PROF'L CONDUCT Rule 1.7(a) (1999).

APPENDIX A

Supplemental Contract Provisions

Note: The following contract provisions should be added to your commercial contracts in order to require Internet mediation on the part of your customers before they are allowed to litigate or arbitrate. These clauses have generally been upheld by the courts, but you should check the law of your jurisdiction. Please print and forward these provisions to your business lawyer for review. Any questions they have may be directed to the email link at the bottom or left of each Webpage.

X. Dispute Resolution Provisions

In the event of a dispute related to this Contract, the parties shall use the following procedure as a condition precedent to either party pursuing other available remedies:

1. A party who believes a dispute exists (the “disputing party”) shall put such dispute in writing to the other party (the “responding party”). Such writing shall clearly, though as briefly as practicable, state the substance and scope of the dispute, the disputing party’s position relative thereto, including legal and factual justifications therefor, the remedy sought, and any other pertinent matters.
2. The responding party who receives such a writing shall respond in writing to the disputing party within ten days. Such writing shall clearly, though as briefly as practicable, state the responding party’s response to each of the items included in the disputing party’s writing, and any other pertinent matters.
3. A telephone conference shall be held within ten days between representatives of the parties having decision-making authority regarding the dispute, to negotiate in good faith a resolution of the dispute.
4. If, within ten business days after such telephone conference, the parties have not succeeded in negotiating a resolution of the dispute, the parties’ representatives shall submit the dispute to the Internet Neutral in accordance with the Internet Neutral Rules ([s]ee <http://www.internetneutral.com/rules.htm>), or if the Internet Mediator is then unable or unwilling to perform due to a conflict of interest, schedule conflict, or otherwise, to a mutually acceptable neutral person, able to utilize the Internet for mediation services similar to

the Internet Neutral (the “neutral”). The fees of, and authorized expenses incurred by, the neutral shall be shared equally by the parties.

5. The parties hereby agree to be bound by the rules and procedures of the Internet Neutral, or those of its replacement neutral, as then-existing.

6. The parties agree to mediate in good faith for a minimum period of ten days from the actual commencement of “on-line” Internet mediation. If the parties are not successful in resolving the dispute through Internet mediation, as above, then the parties may agree to submit the matter to binding arbitration, or either party may pursue other available remedies upon ten days’ written notice to the other party specifying its intended course of action.

7. The parties may mutually agree to extend any of the time periods stated herein.

8. The parties agree that the mediation provided for here is a compromise negotiation for purposes of all international, federal and state rules of evidence. The entire procedure will be confidential. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, representatives or other invitees to the mediation and by the neutral, who is the parties’ joint agent for purposes of these compromise negotiations, are confidential and shall, in addition and where appropriate, be deemed to be attorney-client privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the parties and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative for any of the parties. However, evidence otherwise discoverable or admissible in a later proceeding is not excluded from discovery or admission as a result of its use in the mediation. If not entirely enforceable, the parties intend that the court enforce this provision to the extent enforceable by such court.

APPENDIX B

Internet Neutral Mediation Agreement

The undersigned parties (the “Parties) [sic] as of the undersigned date hereby agree to private, voluntary, confidential and non-binding mediation (the “Mediation”) of a dispute (the “Dispute”) pursuant to the Internet Neutral Mediation Rules (the “Rules”) and hereby adopt and incorporate the Rules by reference, except as specifically provided otherwise hereinafter.

The Parties have chosen Internet Neutral and its mediators (the “Neutral”) as an independent and impartial neutral to aid the Parties in their attempt to settle their Dispute. The Neutral will not decide who prevails in the Dispute and will not render an award, verdict, or judgment, or otherwise determine the fault of any Party.

The Parties, and their counsel and/or other representatives, if any, agree that the Mediation shall be conducted as confidential settlement negotiations. Therefore, statements made during the Mediation shall not be admissible in any legal proceeding, including arbitration, and the Neutral shall not be made a party to, or called as a witness in, any further legal proceeding relating to the Dispute. This issue is treated in greater detail in the Rules.

As stated in further detail in the Rules, the Neutral will not offer legal advice to the Parties, and the Parties should seek legal advice from their own counsel.

The Mediation is not guaranteed to result in settlement of the Dispute. The Mediation may be terminated at the instruction of a Party or the Mediator where a good faith determination is made by either that the Mediation will not result in settlement.

If the Parties reach settlement during the Mediation, the Parties, and not the Neutral, will draft a written agreement setting forth the matters decided prior to adjourning the Mediation conference, although the Neutral may jointly assist the Parties in this effort at their request. The Parties may review this agreement with their legal counsel before the settlement agreement is finalized.

The Parties agree to pay the Neutral as provided in the Rules, on an equal basis.

The Parties agree to utilize the following Internet technologies for resolution of this dispute: [] email, [] instant messaging, [] chat conference rooms, and/or [] video conferencing.

The Parties have caused this Agreement to be duly executed the latest date set forth below.

Internet Neutral:

_____ Date: _____

Entity Name: _____

Individual Capacity: _____

Requesting/Demanding Party:

_____ Date: _____

Entity Name: _____

Individual Capacity _____

Responding Party:

_____ Date: _____

Entity Name: _____

Individual Capacity: _____

APPENDIX C

Request for Mediation

To: Internet Neutral
mediator@internetneutral.com
Address: Waterford Pointe
33626 Rising Tide Court
Dana Point, CA, USA 92629-1925

To: _____, Responding Party
_____, E-mail Address, or
_____, Fax Number, or

_____, Mailing Address

Although no agreement requires it, the undersigned (the "Requesting Party") hereby requests private, voluntary, confidential and non-binding mediation (the "Mediation") of a dispute (the "Dispute") the undersigned believes exists with the Responding Party or Parties listed above pursuant to the Internet Neutral Mediation Rules (the "Rules") and utilizing the Internet (the "Forum").

The Requesting Party believes that an independent and impartial neutral (the "Neutral") will aid the Parties in their attempt to settle the Dispute. The Neutral will not decide who prevails in the Dispute and will not render an award, verdict, or judgment, or otherwise determine the fault of any Party.

The Requesting Party requests that the Mediation be conducted as confidential settlement negotiations, and that statements made during the Mediation shall not be admissible in any legal proceeding, including arbitration, and the Neutral shall not be made a party to, or called as a witness in, any further legal proceeding relating to the Dispute.

The Requesting Party further requests that the Mediation may be terminated at the instruction of a Party or the Neutral where a good faith determination is made that the Mediation will not result in settlement of the Dispute. The Requesting Party further requests that the Parties share equally in the costs of the Mediation, regardless of the outcome thereof.

The Requesting Party further requests that the Responding Party(ies) notify Internet Neutral and the Requesting Party within ten days of his/her/its/their agreement to mediate as requested herein.

Requesting Party:

_____ Date: _____

Entity Name: _____

Individual Capacity: _____

APPENDIX D

Demand for Internet Neutral Mediation

To: Internet Neutral
mediator@internetneutral.com
Address: Waterford Pointe
33626 Rising Tide Court
Dana Point, CA, USA 92629-1925

To: _____, Responding Party
_____, E-mail Address, or
_____, Fax Number, or

_____, Mailing Address

Pursuant to a pre-existing agreement which first requires mediation, the undersigned (the "Requesting Party") hereby demands private, voluntary, confidential and non-binding mediation (the "Mediation") of a dispute (the "Dispute") the undersigned believes exists with the Responding Party or Parties listed above pursuant to the Internet Neutral Mediation Rules (the "Rules") and utilizing the Internet (the "Forum").

The Demanding Party believes that an independent and impartial neutral (the "Neutral") will aid the Parties in their attempt to settle the Dispute. The Neutral will not decide who prevails in the Dispute and will not render an award, verdict, or judgment, or otherwise determine the fault of any Party.

The Demanding Party notes that the agreement between these Parties provides that the Mediation be conducted as confidential settlement negotiations, that statements made during the Mediation shall not be admissible in any legal proceeding, including arbitration, and that the Neutral shall not be made a party to, or called as a witness in, any further legal proceeding relating to the Dispute.

The Demanding Party further notes that the Parties shall share equally in the costs of the Mediation, regardless of the outcome thereof.

The Requesting Party further notes that the Responding Party(ies) shall submit to the Internet Neutral and the Demanding Party within ten days a Mediation Response, as required by the Internet Neutral Mediation Rules.

The Demanding Party has attached hereto a statement, which clearly, though as briefly as practicable, states the substance and scope of the Dispute, the Demanding Party's position relative thereto, including legal and factual justifications therefor, the right or remedy sought, and any other pertinent matters. Copies of relevant documentation, if any, are also attached.

The Demanding Party requests that Internet Neutral propose a mediator and supply information to the Parties sufficient under the Model Standards of Conduct for Mediators to allow the Parties to ascertain whether the proposed mediator has a financial or personal interest in the result of the Mediation and is otherwise qualified within ten days of the date hereof.

The Demanding Party further requests that one or more of the following Internet technologies be utilized by the Parties for resolution: ☐ email, ☐ instant messaging, ☐ chat conference rooms, and/or ☐ video conferencing.

Requesting Party:

_____ Date: _____

Entity Name: _____

Individual Capacity: _____

APPENDIX E

Internet Neutral Mediation Response

To: Internet Neutral

mediator@internetneutral.com

Address: Waterford Pointe
33626 Rising Tide Court
Dana Point, CA, USA 92629-1925

To: _____, Responding Party
_____, E-mail Address, or
_____, Fax Number, or

_____, Mailing Address

The undersigned (the "Responding Party") hereby accepts private, voluntary, confidential and non-binding mediation (the "Mediation") of a dispute (the "Dispute"), which exists with the Demanding/Requesting Party listed above pursuant to the Internet Neutral Mediation Rules (the "Rules") and utilizing the Internet (the "Forum").

The Responding Party also believes that an independent and impartial neutral (the "Neutral") will aid the Parties in their attempt to settle the Dispute. The Neutral will not decide who prevails in the Dispute and will not render an award, verdict, or judgment, or otherwise determine the fault of any Party.

The Responding Party agrees that the Mediation shall be conducted as confidential settlement negotiations, that statements made during the Mediation shall not be admissible in any legal proceeding, including arbitration, and that the Neutral shall not be made a party to, or called as a witness in, any further legal proceeding relating to the Dispute.

The Responding Party further agrees that the Parties shall share equally in the costs of the Mediation, regardless of the outcome thereof.

The Responding Party has attached hereto a statement, which clearly, though as briefly as practicable, states the substance and scope of the Dispute, the Responding Party's position relative thereto, including legal and factual

justifications therefor, the right or remedy sought, and any other pertinent matters. Copies of relevant documentation, if any, are also attached.

The Responding Party further requests that one or more of the following Internet technologies be utilized by the Parties for resolution: ☐ email, ☐ instant messaging, ☐ chat conference rooms, and/or ☐ video conferencing.

Responding Party:

_____ Date: _____

Entity Name: _____

Individual Capacity: _____

APPENDIX F

Internet Neutral Mediation Rules

Introduction

The Internet Neutral Mediation Rules (the “Rules”) will apply to all mediations conducted by the Internet Neutral. Parties may incorporate the Rules by reference in their contracts. See Internet Neutral Terms & Conditions for the provisions.

Internet Neutral Mediation is private, voluntary, confidential and non-binding.

The Internet Neutral itself does not act as Mediator. The Internet Neutral administers the Mediation process in accordance with these Rules and the agreement of the Parties, teaches Mediation and Internet communication skills to its mediators, and maintains a panel of qualified, experienced mediators with an understanding of current legal and business practices, as necessary for the matters pending before Internet Neutral.

A Party may submit a case to the Internet Neutral and request the Internet Neutral to invite the other Party to participate in Mediation. See Request for Mediation Form. If the other Party does not agree to participate in Mediation, no fee is due. If the other Party agrees to participate in Mediation, then the applicable fees are due.

Agreement of the Parties

The Parties shall sign a Mediation Agreement prior to the initiation of Mediation, which obligates each of them to abide by these Rules.

Initiation of Mediation

A Party who believes a dispute exists which should be mediated under the terms and conditions of a pre-existing contract, shall file a Mediation Demand with the other Party and the Internet Neutral.

A Party who believes a dispute exists which should be mediated by Internet Neutral, although no pre-existing contract requires it, may file a Mediation Request with the other Party and the Internet Neutral.

Either form shall clearly, though as briefly as practicable, state the substance and scope of the dispute, the party's position relative thereto, including legal and factual justifications therefor, the right or remedy sought, and any other pertinent matters.

The Mediator

The Internet Neutral shall propose a Mediator and supply information sufficient under the Model Standards of Conduct for Mediators to allow the Parties to ascertain whether the proposed Mediator has any financial or personal interest in the result of the Mediation and is otherwise qualified.

If the Parties agree that the proposed Mediator has no such financial or personal interest and is otherwise qualified, then such proposed Mediator shall be appointed to act as Mediator.

If not, the Internet Neutral shall propose another qualified Mediator, and so on. If any Mediator becomes unwilling or unable to serve, Internet Neutral will appoint another Mediator, unless the Parties agree otherwise.

The Mediation

Once a Mediator has been appointed, the Mediator will administer the Mediation through completion, subject to consultation with the Parties, the prior agreements of the Parties, and these Rules. The Mediator will schedule submission of evidence and memoranda, preliminary joint sessions, as and if necessary, and the Mediation session(s) at the convenience of the Parties and within the agreement of the Parties.

The Mediation Session

A Party may be represented by a person or persons, including counsel, of the Party's choice. The names and addresses of such persons shall be communicated by email to all Parties and the Internet Neutral. Other persons may participate only with the permission of the Parties and the Internet Neutral.

At least one representative of each Party shall have the authority to finally resolve the Dispute. A Party should include a representative with intimate knowledge of the matter.

ONLINE MEDIATION: HAS ITS TIME COME?

Each Party shall cooperate in good faith with the Mediator and the other Party to attempt a reasonable settlement of the Dispute under Mediation. All proceedings shall be conducted with common courtesy.

The Mediator's Authority

The Mediator may not impose a settlement upon the Parties. The Mediator will assist the Parties in settling their Dispute. The Mediator may conduct joint and separate sessions with the Parties, or parts of the Parties, in any order deemed by the Mediator to be most effective.

The Mediator will not disclose confidential information supplied by a Party to the other Party without the first Party's consent. The Parties are cautioned, however, that a Dispute is more likely to settle at the point the full facts and circumstances become known to both Parties.

The Mediator has the discretion to terminate the Mediation, when in his or her judgment, further Mediation will not resolve the Dispute.

Privacy and Confidentiality

The entire Mediation session, from the Request/Demand for Mediation to the Settlement Agreement or abandonment, and everything in between, is private and confidential. All information disclosed during the Mediation shall not be divulged to Parties outside of the Mediation. The Parties shall not disclose as evidence in any further legal proceeding involving the matter in Mediation any aspect of the Mediation not otherwise discoverable by the rules of such further legal proceeding.

All information received by the Mediator shall be confidential, and the Mediator shall not be compelled to divulge such information, including testifying in any further legal proceeding involving the matter in Mediation. The Mediator shall not keep any official record of the Mediation, and all notes made by the Mediator during Mediation are subject to destruction upon termination of the Mediation.

Termination of Mediation

The Mediation shall be terminated upon execution by the Parties of the Settlement Agreement or upon a writing of a Party or the Internet Neutral to the effect that further efforts at Mediation will not resolve the Dispute.

Mediation Fees and Expenses

The Party filing a Mediation Demand shall accompany such with a check in the sum of \$250, or if to be resolved by email only, in a sum to be advised by Internet Neutral. The Party filing a Mediation Response shall also accompany such with a check in the sum of \$250, or if to be resolved by email only, in an equal sum to be advised by Internet Neutral.

Each such deposit shall be nonrefundable as an administrative Mediation fee, but shall also be a retainer against which the Mediator shall charge \$125 per hour for time spent in Mediation. The full deposit shall be creditable against time spent by the Mediator in Mediation.

Fees and expenses shall be shared equally between the Parties. Fees exceeding the original deposits shall be payable upon email request of Internet Neutral. Fees not paid within 10 days shall incur interest at the rate of 1% per month, compounded monthly, but not to exceed the rate of interest allowed by the law of the Party paying.

Expenses of producing representatives, witnesses, and evidence shall be borne by the Party producing same. Expenses of providing computer, Internet, and software sufficient to support Mediation shall be borne by the Parties individually. Internet Neutral will reasonably adapt to the computer, Internet, and software resources available to a Party.

Although many Mediations settle within hours, such results cannot be guaranteed. No result, including settlement, can be guaranteed. Time spent by the Mediator shall include administration, communication with the Parties, reviewing of documents, Mediation sessions, and any settlement agreement entered into.

Legal Terms and Conditions

Nothing stated by the Internet Neutral or its Mediators shall be considered legal advice or to create any attorney-client relationship. A Party may retain legal counsel. If a legal issue arises, the Mediator may request that a Party obtain legal counsel.

Neither Internet Neutral nor its Mediators shall be liable to any Party for any act or omission relating to Mediation under these Rules.

Neither Internet Neutral nor its Mediators shall be a necessary Party to any legal proceedings relating to a Mediation. The Parties agree to oppose any

ONLINE MEDIATION: HAS ITS TIME COME?

efforts to make a Mediator a witness in any legal proceeding relating to the Mediation. Both Internet Neutral and its Mediators shall be disqualified as witnesses in any legal proceeding relating to the Mediation. Both Internet Neutral and its Mediators shall be disqualified as an attorney, expert, or consultant in any legal proceeding relating to the Mediation.

APPENDIX G

*General Website Statistics, Courtesy of WebTrends**

- Date and time this report was generated: Sunday, October 3, 1999 at 6:05:45 p.m.
- Timeframe for this report: July 31, 1999 at 8:10:36 p.m. through November 3, 1999 at 5:48:00 p.m.

GENERAL STATISTICS	
Number of Hits for Home Page	697
Number of Successful Hits for Entire Site	7,674
Number of Page Views (Impressions)	3,227
Number of User Sessions	1,563
User Sessions from U.S.	75.11%
International User Sessions	8.12%
User Sessions of Unknown Origin	16.76%
Average Number of Hits Per Day	119
Average Number of Page Views Per Day	50
Average Number of User Sessions Per Day	24
Average User Session Length	00:07:08
Number of Unique Users	923
Number of Users Who Visited Once	719
Number of Users Who Visited More Than Once	204

* My Host does not keep WebTrends statistics for previous quarters, but these are a fair representation of the nearly two years Internet Neutral has been online. *See supra* Part VI for further explanations of these statistics.

ONLINE MEDIATION: HAS ITS TIME COME?

APPENDIX H

Most Requested Pages, Courtesy of WebTrends

MOST REQUESTED PAGES					
	Pages	Views	Percentage of Total Views	User Sessions	Average Time Viewed
1	Home: Internet Neutral Mediation Services: Description of Services: http://www.internetneutral.com	697	21.59%	551	00:01:10
2	Links: Internet Neutral Mediation Services: Guides, Essays, Articles, Resources: http://www.internetneutral.com/links.htm	273	8.45%	232	00:02:24
3	The Fees: Internet Neutral Mediation Services: Selling Point: Fee Schedule: http://www.internetneutral.com/fees.htm	208	6.44%	175	00:01:39
4	In a Nutshell: Internet Neutral Mediation Services: Mediation Clause: Preparation: http://www.internetneutral.com/nutshell.htm	202	6.25%	169	00:01:41
5	The Forms: Internet Neutral Mediation Services- Agreement, Request, Demand: http://www.internetneutral.com/forms.htm	162	5.02%	138	00:00:50
6	Representative Mediator: Internet Neutral Mediation Service: Experience in Brief: http://www.internetneutral.com/resume.htm	135	4.18%	112	00:01:18
7	The Rules: Internet Neutral Mediation Services: Intro: Agreement: Initiation: http://www.internetneutral.com/rules.htm	122	3.78%	106	00:01:44

(Table continues on following page)

8	Agreement to Mediate: Internet Neutral Mediation Services: Private, Voluntary: < http://www.internetneutral.com/agreement.htm >	122	3.78%	116	00:01:31
9	Contract Provisions: Internet Neutral Mediation Services: Supplemental Contract: < http://www.internetneutral.com/terms.htm >	102	3.16%	89	00:01:12
10	Request for Mediation: Internet Neutral Mediation Services: < http://www.internetneutral.com/request.htm >	98	3.03%	95	00:01:24
	Subtotal for the Page Views Above	2,121	65.72%	N/A	N/A
	Total for the Log File	3,227	100%	N/A	N/A

ONLINE MEDIATION: HAS ITS TIME COME?

APPENDIX I

Most Active Countries, Courtesy of WebTrends

MOST ACTIVE COUNTRIES		
	Country	User Sessions
1	United States	1,174
2	Australia	26
3	Canada	21
4	United Kingdom	21
5	New Zealand (Aotearoa)	12
6	Germany	11
7	Singapore	8
8	Norway	3
9	Israel	2
10	Malaysia	2
	Total	1,280

APPENDIX J

Organizational Breakdown, Courtesy of WebTrends

ORGANIZATIONAL BREAKDOWN				
	Organization Breakdown	Hits	Percentage of Total Hits	User Sessions
1	Network	2,625	50.1%	279
2	Company	2,234	42.64%	851
3	Education	273	5.21%	27
4	Organization	56	1.06%	6
5	Government	30	0.57%	12
6	Military	18	0.34%	4
7	Arpanet	3	0.05%	1
	Total for Known Organization Types	5,239	100%	1,180

ONLINE MEDIATION: HAS ITS TIME COME?

APPENDIX K

Top Search Engines, Courtesy of WebTrends

TOP SEARCH ENGINES			
	Engine	Searches	Percentage of Total
1	Alta Vista	146	34.19%
2	Yahoo	119	27.86%
3	AOL NetFind	26	6.08%
4	Excite	21	4.91%
5	GoTo	18	4.21%
6	Lycos	17	3.98%
7	LookSmart	15	3.51%
8	Microsoft Network	14	3.27%
9	Go2Net	14	3.27%
10	InfoSeek	12	2.81%
	Total of Searches for the Engines Listed Above	402	94.14%
	Total of Searches for the Log File	427	100%

APPENDIX L

Top Search Phrases, Courtesy of WebTrends

TOP SEARCH PHRASES			
	Search Phrase	Phrases Found	Percentage of Total
1	Mediation	36	8.43%
2	Descriptive Essays	29	6.79%
3	Mediation Services	25	5.85%
4	Internet Mediation	13	3.04%
5	Internet Arbitration	12	2.81%
6	Corporate Lawyer	11	2.57%
7	Online Arbitration	9	2.10%
8	Mediation Forms	5	1.17%
9	Internet Laws	5	1.17%
10	Online Mediation	5	1.17%
	Total Found for the Phrases Above	150	35.12%
	Total of Phrases Found in the Log File	427	100%